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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,821	07/25/2007	Michael Voegelé	FIE1 PAU.02	4621
23386 7590 09/29/2009 Myers Andras Sherman LLP 19900 MacArthur Blvd. Suite 1150 Irvine, CA 92612				
EXAMINER NGUYEN, TIN DUC				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
09/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/591,821

Applicant(s)

VOGELE, MICHAEL

Examiner

TIN NGUYEN

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09/06/2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. **Claim 4** is objected to because of the following informalities: "An apparatus according to one of the claims claim 1" is a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1 – 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Shum* (U.S. Patent No. 4,407,625) in view of *Egan* (U.S. Patent Pub. 2002/0014017 A1).

As to **claim 1**, *Shum* discloses an apparatus, comprising: at least one base holder (48) applied to the base plate and holding rods (46) attached thereto in an articulated manner for holding and positioning a targeting device for a medical instrument, characterized in that the target device is mounted on two adjustment arms (76 and 62) which are each movable by means of an actuating drive on the free ends of the holding rods in the X- and/or Y-plane (Figs. 2, 9 – 10; col. 1, lines 44 - 46). *Shum* does not disclose a base plate.

However, *Egan* teaches a system having a base plate (30) (Fig. 1; [0013]) in order to support and mount the frame device to the base plate. It would have been

obvious to one of ordinary skill in the art at the time of the invention was made to configure the invention of *Shum* having a base plate in view of *Egan* in order to support and mount the frame device to the base plate.

As to **claim 2**, dependent on claim 1, *modified Shum* discloses that the adjustment arms are bent towards the patient (*Shum*; col. 3: lines 48 - 50).

As to **claim 3**, dependent on claim 1, *modified Shum* discloses that a guide tube (20, 78) for the medical instrument is mounted on the free ends of the adjustment arms, especially by way of ball heads (*Shum*; figs. 1 & 9).

As to **claim 4**, dependent on claim 1, *modified Shum* discloses that the base plate comprises a scaffold- or portal-like frame (*Egan*; fig. 1 & *Shum*; figs. 1 & 9).

As to **claim 5**, dependent on claim 1, *modified Shum* discloses that the base plate comprises marking for repositioning the frame which can be fastened to the base plate in a magnetic, pneumatic or mechanical manner (*Egan*; [0013]).

As to **claim 6**, dependent on claim 1, *modified Shum* discloses that the two actuating drive (34) are arranged directly above one another and are preferably arranged as flat boxes (Figs. 5 & 9).

As to **claim 7**, dependent on claim 1, *modified Shum* discloses that the actuating drives each comprise a compound slide for the adjustment of the respective adjustment arm in the X-Y plane, especially with remote-controllable threaded spindles (Figs. 5 & 9; col. 1, lines 44 – 46; col. 2, lines 63 - 65).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIN NGUYEN whose telephone number is (571)270-7407. The examiner can normally be reached on M-F /8:30 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, AnhTuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./
Examiner, Art Unit 3731

/AnhTuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
9/28/09